

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS**

JOANNE M. ROYER,

Plaintiff,

v.

BLUE CROSS BLUE SHIELD OF  
MASSACHUSETTS, INC., BLUE  
CROSS BLUE SHIELD LONG-TERM  
DISABILITY BENEFIT PLAN, a/k/a  
OMNIBUS WELFARE BENEFITS  
PLAN, KEMPER NATIONAL  
SERVICES, INC., BROADSPIRE  
SERVICES, INC., AND SHELDON  
MYERSON, M.D.,

Defendants.

**CIVIL ACTION NO:  
NO: 05-CV-10448-GAO**

**DEFENDANTS' MEMORANDUM IN SUPPORT OF THEIR MOTION  
TO DISMISS COUNT III OF THE PLAINTIFF'S  
SECOND AMENDED COMPLAINT**

Blue Cross Blue Shield Long-Term Disability Benefit Plan ("the Plan"), Kemper National Services, Inc. ("KNS"), Broadspire Services, Inc. ("Broadspire") and Sheldon Myerson, M.D. ("Dr. Myerson"), defendants in this matter, for their Memorandum in Support of their Motion to Dismiss Count III of the plaintiff's Second Amended Complaint state as follows:

**I. INTRODUCTION**

Count III of the plaintiff's Second Amended Complaint attempts to state a cause of action against various defendants for their alleged failure to provide ERISA Plan documents under §502(c) of ERISA, 29 U.S.C. §1132(c). However, the plaintiff may state such a claim only against the Plan Administrator of the ERISA Plan. The Plan and the other defendants, other than

the Plan Administrator, cannot be found liable under that section. Therefore, for reasons stated more fully below, this Court must dismiss Count III as to those defendants.

## **II. ARGUMENT**

Section 502(c) of ERISA, 29 U.S.C §1132(c), provides a cause of action against the Plan Administrator for an ERISA Plan participant who requests but fails to receive information regarding Plan documents or her benefit claim. Section 1002(16)(A) of ERISA defines a Plan Administrator as “the person specifically so designated by the terms of the instrument under which the Plan is operated.” Where the terms of an ERISA-regulated welfare plan do not specifically designate the Plan as the administrator, the Plan cannot be held liable for alleged informational violations of ERISA. *Thorpe v. Retirement Plan of Pillsbury Co.*, 80 F.3d 439 (10<sup>th</sup> Cir. 1996). Where the employer is designated as the Plan Administrator, only the employer can be held liable under ERISA for an alleged violation of §502(c). *VanderKlok v. Provident Life and Acc. Ins. Co.*, 956 F.2d 610 (6<sup>th</sup> Cir. 1992). *See also Nechis v. Oxford Health Plans, Inc.*, 328 F. Supp. 2d 469 (S.D.N.Y. 2004).

Here, Blue Cross Blue Shield was the Plan Administrator for the ERISA Plan’s at issue. As such, because the plaintiff cannot state a claim against any entity other than the Plan Administrator for an alleged violation of §502 (c), Count III as to all other defendants fails to state a claim upon which relief may be granted.

## **III. CONCLUSION**

For the reasons stated above, defendants, Blue Cross Blue Shield Long-Term Disability Benefit Plan, Kemper National Services, Broadspire Services and Sheldon Myerson, M.D., respectfully request that this Court dismiss Count III of the plaintiff’s Second Amended

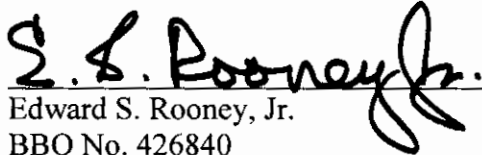
Complaint as to those defendants pursuant to Rule 12 (b)(6) of the Federal Rules of Civil Procedure.

Respectfully submitted,

BLUE CROSS BLUE SHIELD LONG-TERM  
DISABILITY BENEFIT PLAN, KEMPER  
NATIONAL SERVICES, INC., BROADSPIRE  
SERVICES, INC. and SHELDON MYERSON, M.D.

By their attorneys:

DATED: August 4, 2005

  
Edward S. Rooney, Jr.

BBO No. 426840

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CERTIFICATE OF SERVICE

I hereby certify that a true copy of the above document was served upon the attorney of record for each other party by overnight mail this 4<sup>th</sup> day of August, 2005.

E. S. Rooney Jr.  
Edward S. Rooney, Jr.